

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Alenco Communications, Inc.,)	
Big Bend Telephone Company, Dell)	
Telephone Cooperative, Inc., Riviera)	
Telephone Company, Valley Telephone)	CC Docket No. 96-45
Cooperative , Inc., Texas Statewide)	
Telephone Cooperative, Inc., and Texas)	
Telephone Association for a Declaratory)	
Ruling and for Preemption)	

**COMMENTS IN SUPPORT OF PETITION FOR
DECLARATORY RULING AND PREEMPTION ON BEHALF OF
THE WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION**

June 22, 2007

INTRODUCTION

The Washington Independent Telephone Association (“WITA”) is a trade association representing those companies that qualify as rural incumbent local exchange carriers in the state of Washington. WITA has only recently learned of the Petition filed by Alenco Communications, Inc. and others. However, WITA believes the Petition raises important issues which need to be addressed.

Based upon the facts as represented in the Petition, the Petition should be granted and the Public Utility Commission of Texas (“PUCT”) Order designating DialTone Services, L.P. (“DTS”) as an eligible telecommunications carrier (“ETC”) should be preempted.

ANALYSIS

DTS is a reseller of Globalstar’s satellite service. There are two questions raised by the Petition. The first is whether DTS has sufficient communications facilities to be said to be a facilities-based carrier eligible for ETC designation. The second is the public policy issues associated with the designation of ETC status for carriers such as DTS and what doors such designation might open to wholesale inflation of the federal high-cost universal service fund.

1. It does not appear that DTS owns facilities that would qualify it to be eligible to receive ETC designation.

In the proceeding before the PUCT, DTS admitted that satellite connectivity is through services it obtains from Globalstar. DTS also admitted that the “fixed satellite earth stations” that it said it owned as the facilities described in its application for ETC status are really rooftop antennas at the customer’s house and further admitted that these antennas are customers’ terminal equipment on the end-user side of the communication path.¹ The Petition also describes that to the extent there are other facilities owned by DTS, these are equipment associated with

¹ Petition at p. 8 citing to Exhibits H, F, and I to the Petition, which are portions of the record before the PUCT.

installing the fixed-service rooftop antennas such as guy wires, mounts, poles, offset brackets, network interface boxes, etc. DTS admitted that this equipment is located entirely on the customer's side of the customer's antenna.²

For mobile service, DTS provides a mobile handset and related accessories. That appears to be the only equipment related to the mobile resale of the Globalstar satellite service.³

This limited claim of facilities, and what are really customer premise equipment, cannot be said to qualify as the required physical components of the telecommunications network that are used in the transmission or routing of services designated for support under Section 254(c)(i).⁴

This Commission has clarified that wireless handsets and associated antennas are customer premise equipment and are ineligible for universal service support.⁵

Thus it appears that the DTS application not only is contrary to the clear, logical concept of excluding resellers, it is also contrary to prior FCC orders specifically on point.

2. Allowing the DTS Order to stand would be contrary to the public policy directions of controlling the burgeoning growth of the high-cost universal service fund.

Very recently, the Federal-State Joint Board on Universal Service ("Joint Board") issued its Recommended Decision for an interim step in controlling the burgeoning growth of the federal

² Petition at p. 10 citing to portions of the transcript attached as Exhibit F to the Petition.

³ Petition at p. 8 citing to the transcript, Exhibit F to the Petition.

⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157 (May 8, 1997) ("Universal Service Order") at ¶151.

⁵ Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Twelfth Report and Order, FCC 00-2008 (June 30, 2000) at ¶61-63 as clarified by In re Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Commonwealth of Northern Mariana Islands, CC Docket 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, FCC 03-115 (2003) at ¶18.

high-cost universal service fund.⁶ In the Recommended Decision, the Joint Board found that “high-cost support has been rapidly increasing in recent years and, without immediate action to restrain growth in competitive ETC funding, the federal universal service fund is in dire jeopardy of becoming unsustainable.”⁷ The Joint Board found that the support for competitive ETCs has grown from approximately fifteen million dollars in 2001 to almost one billion dollars in 2006 and is expected to reach 1.28 billion dollars in 2007.⁸

It might be argued that designation of DTS does no more harm to the growth in the size of the high-cost fund because the Recommended Decision, if adopted, simply means that other competitive ETCs will receive less funding. However, WITA believes that something more fundamental is at stake in this matter.

The growth in competitive ETC support appears to be primarily in wireless ETCs. Most commercial mobile radio service providers (wireless ETCs) are of the traditional land based wireless service. These companies build and own switches, build and own cellular antennas, and build or purchase transmission facilities between cell sites. Thus, most wireless ETCs have substantial investment in infrastructure.⁹ DTS has none of this. DTS is involved only in constructing the customer’s side of the service; that is, customer premise equipment. Although this customer premise equipment is somewhat more expensive than most, in concept it is no different than a customer going to their local discount store and purchasing a Skype handset. Why should this type of provider be encouraged to apply for competitive ETC

⁶ In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (Rel. May 1, 2007) (“Recommended Decision”).

⁷ Recommended Decision at ¶4.

⁸ Ibid.

⁹ WITA’s position is that these facilities are in place because of market considerations, not to promote universal service. However, that is an issue for another day. It is fact that there is a substantial investment in infrastructure for most wireless ETCs.

funding?

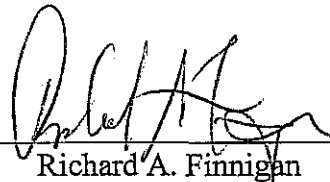
Even in the unlikely event that funding for competitive ETCs is permanently capped at the 2006 level, continued proliferation of the designation of competitive ETCs that are not really investing in network infrastructure will mean that support for competitive ETCs that are actually investing in infrastructure becomes meaningless.

CONCLUSION

To paraphrase President Truman, "The buck must stop here." The open purse strings of the federal high-cost universal service support mechanism for increasingly tenuous ETC designations must be closed. WITA strongly urges the Commission to preempt the decision of the PUCT and deny ETC status for DTS.

Respectfully submitted this 22nd day of June, 2007.

By: _____



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